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Confidential Email

Dear Mr Cosgrave

FOXTEL Special Access Undertaking - Submission by Seven Network

We refer to the submission by Seven Network Limited (**Seven**) in relation to FOXTEL's Special Access Undertaking (the **Undertaking**).

Section 4.2 of Seven's submission refers to a report by Professor Stephen King entitled "Competitive Effects of the FOXTEL Undertakings" dated 3 October 2002 and quotes extensively from that report.

Seven indicates that "given Professor King's current role" (presumably as an ACCC Commissioner), Seven has not discussed with him the Undertaking or his previous report in the context of the Undertaking. Seven submits, however, that the economic principles and the analysis in respect of the tie set out in Professor King's previous report apply equally to the DAA.

FOXTEL objects to the use by Seven of Professor King's report in this way.

First, it raises the question what documents and evidentiary material Seven in fact relies on for the purpose of the Undertaking given its reference to parts of a previous report. It is not clear whether the whole of the report is relied on, or only part of the report, and whether there are any other previous reports that Seven relies on.

Second, and more importantly, FOXTEL objects to Seven's reliance on Professor King's report at all in the context of the Undertaking. Professor King's report was prepared in an entirely different context 3½ years ago and, given his position, he is unable to provide any further report on whether his views are still relevant and whether he holds to his views in respect of the current Undertaking. It is therefore inappropriate to rely on this report.

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FOXTEL requests that the Commission confirm that it will not be relying on Professor King's Report in its assessment of FOXTEL's Undertaking. If the Commission is to rely on the Report, then FOXTEL reserves the right to submit supplementary evidence responding to this Report and to object to its use in any appeal.

Regards

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